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CLERK U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIF.
SAN FRANCISCO

1 JOHNSON AND ASSOCIATES
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4 Attorneys For Plaintiff
5 DARTY CRONIN
6

7 UNITED STATES DISTRICT COURT
8 FOR THE CENTRAL DISTRICT OF CALIFORNIA
9

10
11 DARTY CRONIN,

12 Plaintiff,

13 v.
14

15 MONEX DEPOSIT COMPANY, a
16 California limited Partnership,
LOUIS CARABINI, MICHAEL
17 CARABINI, MIKE MARONEY, DAVID
18 GALA, DAN J. C. WALES, AND DOES
1 - 200

19 Defendants.
20

Case No. SACV 08-01297DOC (MLGx)

FIRST AMENDED COMPLAINT

JURY DEMANDED

1. Fraud Under Commodity Futures
Modernization Act of 2000

2. Common Law Fraud

3. Breach of Contract

4. Negligent Misrepresentation

5. Constructive Fraud

6. Common Count

21
22
23 Plaintiff alleges as follows:
24

25 JURISDICTION

26 1. The jurisdiction of this Court over the subject matter of
27 this action is predicated on 28 U.S.C. § 1337 and 7 U.S.C. § 1, et
28 seq.

1/5 2008
cv-5
given

1 **VENUE**

2
3 2. Plaintiff is informed and believes, and thereon alleges,
4 that all Defendants reside in this District. In addition, the claim
5 arose in this District.
6

7 **PARTY ALLEGATIONS**

8
9 3. Plaintiff DARTY CRONIN is an individual residing in the
10 County of Los Angeles, State of California ("CRONIN").
11

12 4. Plaintiff is informed and believes, and thereon alleges,
13 that Defendant MONEX DEPOSIT COMPANY ("MONEX") is a California
14 limited partnership with its principle place of business in Orange
15 County, California.
16

17 5. Plaintiff is informed and believes, and thereon alleges,
18 that Defendant LOUIS CARABINI ("L. CARABINI") is an individual
19 residing in Orange County, California.
20

21 6. Plaintiff is informed and believes, and thereon alleges,
22 that Defendant MICHAEL CARABINI ("M. CARABINI") is an individual
23 residing in Orange County, California.
24

25 7. Plaintiff is informed and believes, and thereon alleges,
26 that Defendant MIKE MARONEY ("MARONEY") is an individual residing
27 in Orange County, California.
28

1 8. Plaintiff is informed and believes, and thereon alleges,
2 that Defendant DAVID GALA ("GALA") is an individual residing in
3 Orange County, California.
4

5 9. Plaintiff is informed and believes, and thereon alleges,
6 that Defendant DAN J. C. WALES ("WALES") is an individual residing
7 in Orange County, California.
8

9 10. Plaintiff is not currently aware of the names and/or
10 capacities of the Defendants sued herein as DOES 1 through 200,
11 inclusive, and therefore sue said Defendants by such fictitious
12 names. Plaintiff is informed and believes that said Defendants are
13 responsible in some manner, or culpable for some reason, for
14 Plaintiff's damages and the acts alleged herein. Plaintiff will
15 amend this Complaint to allege the true names and capacities of
16 these Defendants when the same are ascertained. Defendants MONEX,
17 L. CARABINI, M. CARABINI, MARONEY, GALA, WALES, and DOES 1 through
18 200, inclusive, shall be collectively referred to herein as
19 "Defendants".
20

21 11. Plaintiff is informed and believes that at all times
22 mentioned herein, each of the Defendants sued herein was an agent,
23 principal, representative, employer, or employee of each of the
24 other Defendants acting within the purpose and scope of such
25 agency, representation or employment, and that each Defendant
26 directed, was aware of, acted upon, ratified, and/or accepted the
27 benefits of the acts and representations of each of the other
28 Defendants. In addition, Plaintiff is informed and believes that

1 Defendants entered a conspiracy with one another to commit the acts
2 alleged herein below as more fully described herein below.

3
4 **INTRODUCTORY ALLEGATIONS**

5
6 12. Plaintiff is informed and believes, and thereon alleges,
7 that in or before June of 2007, Defendants MONEX, L. CARABINI, M.
8 CARABINI, MARONEY, GALA, and WALES and Does 1 through 200, entered
9 into a conspiracy to engage in the silvers futures market, without
10 becoming members of a commission-designated board of trade as
11 required by Federal law, and with the intent to divest investors of
12 their monies for Defendants' personal gain by managing investment
13 accounts for futures contracts in a manner calculated to cause
14 their investors to lose money rather than to help investors realize
15 gains. Plaintiff is further informed and believes, and thereon
16 alleges, that in addition to seeking to have the benefits
17 associated with clientele that were paying fees on transactions,
18 and in addition to seeking to divorce their clientele from their
19 money, that Defendants also devised a scheme pursuant to which they
20 could leverage the monies invested by their clientele to generate
21 profits of their own, including the profits their clientele would
22 otherwise have realized. Plaintiff is further informed and
23 believes, and thereon alleges, that at all relevant times
24 Defendants were in need of substantial cash influx into MONEX by
25 reason of the fact that at all relevant times the Internal Revenue
26 Service was pursuing MONEX for over \$378,000,000 in unpaid taxes.
27 Plaintiff is informed and believes, and thereon alleges, that
28 Defendants, and each of them, undertook the acts described herein

1 in furtherance of said conspiracy.

2
3 13. MONEX advertises itself to be a purchaser and seller of
4 precious metals. Plaintiff is informed and believes that this
5 aspect of MONEX' business is simply a front to hide the unlawful
6 and fraudulent activities that are described in this Complaint and
7 to locate members of the general public that can be persuaded to
8 invest in silver futures contracts.

9
10 14. In or about June of 2007, CRONIN contracted to purchase
11 precious metals (gold and silver) from MONEX. CRONIN was introduced
12 to MONEX by one of its account representatives, Sherri Boland
13 ("Boland"). Plaintiff is informed and believes that he signed a
14 written contract with MONEX relating to standard purchases of
15 precious metals from MONEX and standard sales of precious metals to
16 MONEX, though Plaintiff does not recall doing so. As explained
17 below, said contract, if it exists, is not at issue in this
18 litigation. In the course of purchasing precious metals from MONEX,
19 Boland became CRONIN's MONEX account representative. MONEX
20 describes its account representatives as being trained and
21 experienced professionals in the precious metals market whose
22 function is to provide investment strategies to their clientele.
23 MONEX describes itself as being one of the most experienced and
24 expert firms in the precious metals market.

25
26 15. In or about June, 2007, in the course of CRONIN's
27 making of some standard purchases of precious metals from MONEX,
28 Defendants learned that CRONIN had significant wealth and was of

1 the class of clientele that Defendants desired to target as a
2 victim of the fraudulent scheme described herein.

3
4 16. Accordingly, Defendants initially permitted Boland to
5 service CRONIN's account for the very reason that she was an honest
6 individual with no knowledge of Defendants' fraudulent intentions
7 who was extremely skilled in the precious metals market and whom
8 Defendants knew would instill trust and confidence in CRONIN and
9 guide him in the investment of substantial sums in futures
10 contracts without arousing suspicion as to Defendants' true intent
11 simply to take such funds from him.

12
13 17. Plaintiff is informed and believes, and thereon alleges,
14 that Defendants intentionally suppressed the following material
15 facts from Sherri Boland so that she would unwittingly act as
16 Defendants' agent in suppressing material facts from CRONIN and
17 other MONEX clientele: A) That MONEX was engaged in a futures
18 contract business that required that it be registered on a
19 commission-designated board of trade under federal law, B) that the
20 "short" investment program described below was of a nature that
21 required registration on a commission based board of trade under
22 federal law, C) that it was Defendants' actual intent not to assist
23 their clients to realize profits but was, instead, their intent to
24 steal their clients' money through fraud, deception, and unlawful
25 acts, D) that Defendants intended to maneuver "short" transactions
26 in a manner calculated to cause their clientele to lose money, and
27 E) that Defendants would utilize their clients' monies procured
28 through the "short" investment program in a manner so as to realize

1 profits of their own at the expense of their clients, including
2 profits their clients would otherwise have realized. These
3 suppressed facts shall hereinafter be referred to as the
4 "Suppressed Facts".

5
6 18. Within a short time after CRONIN had made some standard
7 purchases of precious metals from MONEX, he was advised by Sherri
8 Boland, about a completely different MONEX program that had nothing
9 to do with the conventional purchase and sale program that CRONIN
10 started out with. Defendants represented to CRONIN, through their
11 unwitting agent, Sherri Boland, that this different program would
12 permit him to make a profit by selling silver when the price of
13 silver was declining in the market with the aid of his account
14 representative. This program was referred to as "going short". It
15 was represented to CRONIN by Defendants, through Boland, that in a
16 "short" transaction he would commit to MONEX to sell "borrowed"
17 silver at a specified price and in a specified quantity and that
18 under this program MONEX would assure CRONIN that it would arrange
19 and assure the purchase of the silver at that price through an
20 undisclosed purchaser and that at any given time in the future that
21 CRONIN determined to buy the silver to cover the sale MONEX would
22 produce a seller at the then existing market price. Accordingly, on
23 a date certain CRONIN could lock in a sales price for silver at the
24 then prevailing rate in a specified amount, but without having to
25 cover the sale at that time, and could buy the silver to cover the
26 sale at a future time of his own choosing at the market rates
27 prevailing at the time of the election. Thus, if the price of
28 silver went down after the commitment to sell CRONIN would make a

1 profit based on the "bet" that the price of silver would drop. If
2 the price of silver increased above the committed sale price CRONIN
3 could lose money if the market trend did not reverse and decline
4 once again. CRONIN is informed and believes that Sherri Boland was
5 authorized by her superiors at MONEX to offer this program to
6 CRONIN, and to make the foregoing representations regarding it, and
7 that she was given authority to enter into an oral agreement with
8 CRONIN with regard to the program and as to each short transaction
9 (CRONIN is informed and believes that as to each "short"
10 transaction Boland would have to procure specific authorization
11 from her superiors to enter such transaction).

12
13 19. The means through which MONEX could permit this program to
14 operate are unknown to CRONIN as they were never explained to him.
15 Only the concept that CRONIN could make a profit in a declining
16 silver market on the terms just described was explained and
17 represented and that this would ultimately be accomplished by MONEX
18 guarantying to produce a buyer at the locked in sales price and a
19 seller of the silver necessary to back CRONIN's prior "sale" from
20 which CRONIN could purchase the silver to cover the sale at less
21 than the sales price if the market declined. Plaintiff is informed
22 and believes that to make this program work MONEX would have to
23 have offsetting "long" transactions to balance the "short"
24 transactions and that the "long" offsets were either from
25 commitments of other MONEX customers or were the commitment of
26 MONEX itself without the silver bullion to back it up. Indeed,
27 Plaintiff is informed and believes that with regard to all short
28 transactions he entered with MONEX pursuant to the oral agreement

1 further described below, that there was no physical transfer of
2 silver from seller to buyer (and that there was no intent that
3 actual physical delivery of silver would occur) and that a "short"
4 transaction was either literally a paper transaction with no silver
5 to back it or was for all practical purposes strictly a paper
6 transaction the value of which turned on the outcome of "betting"
7 on market trends over time rather than in the value of the
8 commodity in a straight forward purchase and sale.

9
10 20. In summary, at least the following misrepresentations were
11 made to CRONIN by Defendants through their unwitting agent Boland:
12 1) that MONEX was offering CRONIN an opportunity to make a profit
13 in a declining silver market when they harbored the opposite
14 intent, 2) that MONEX would provide a sound investment strategy,
15 designed to make his investments profitable, through the client's
16 account representative (this statement was true with regard to
17 Boland but was not true with regard to the intended future account
18 representative to be assigned to CRONIN under the bait and switch
19 described below), 3) that MONEX would act consistent with the
20 terms of the program as outlined above, and 4) that in all respects
21 Defendants had CRONIN's interests at heart. These
22 misrepresentations shall hereinafter be referred to as the "Initial
23 Misrepresentations".
24

25 21. Based on the Initial Misrepresentations and without
26 knowledge of the Suppressed Facts, CRONIN decided he wanted to
27 invest in "short" transactions with MONEX and to enter an agreement
28 with MONEX to that effect and so advised Sherri Boland. Boland

orally agreed to entry of such an agreement on behalf of MONEX, with approval of her superiors, resulting in the formation of an oral agreement between MONEX and CRONIN whereunder CRONIN could invest in "short" transactions. Under existing law, and given the foregoing facts, "short" transactions are "futures contracts" and, accordingly, the referenced agreement as to "short" transactions shall be referenced herein as the "Futures Contract". The terms of the Futures Contract, express and implied, were as follows: 1) CRONIN's account would be managed by an account representative who would formulate and provide to CRONIN an investment strategy - - i.e., whether to take conventional positions in silver or whether to invest his monies in the "short" transaction format wherein he could speculate as to whether the price of silver would drop and profit if it did drop, 2) his account representative would have CRONIN's best interests at heart, 3) that MONEX, through its sole efforts outside of the control of CRONIN, would guaranty that at any point in time that CRONIN decided to make the "purchase" to offset the "sale" in a "short" transaction there would be a seller available for CRONIN to buy at the then prevailing market rates which would then be matched against his sell commitment - - thus MONEX assured CRONIN that through its efforts CRONIN would be able to sell high and buy low if the silver market dropped through this deferred form of transaction, and 4) that CRONIN would go "short" with the intent of making a profit based on pure speculation as to fluctuations in the price of silver subject only to the risk that silver market rates might rise instead of fall. Implied within this oral agreement was a covenant of good faith and fair dealing wherein MONEX agreed that it would do nothing to deprive CRONIN of

1 the benefit of his bargain, including by avoiding the making of
2 statements that were calculated to cause CRONIN to lose money so
3 that Defendants could enrich themselves. Such terms were applicable
4 as to all of the specific investments CRONIN would make under the
5 program. ("Futures Transactions").
6

7 22. Consistent with Defendants' plan to deceive CRONIN, Boland
8 had CRONIN's interests at heart in managing his account and he
9 gained trust and confidence in dealing with MONEX as a consequence
10 of Defendants' permitting Boland to service his account. CRONIN
11 entered Futures Transactions pursuant to the Futures Contract and
12 made a profit by following Boland's investment strategy in this
13 regard. Over time CRONIN invested millions in Futures Transactions.
14 Plaintiff is informed and believes, and thereon alleges, that
15 Defendants also permitted Boland to develop other substantial
16 accounts with clientele that had substantial monies, also with the
17 intent of building their faith and confidence and investment
18 outlay, and then terminated Boland on or about July 18, 2008. By
19 terminating BOLAND Defendants would be free to acquire control over
20 CRONIN's "short" investments and to persuade him to change those
21 positions in favor of conventional positions of silver all as
22 further set forth herein.
23

24 23. Plaintiff is informed and believes that at all relevant
25 times L. CARABINI and M. CARABINI supervised and controlled the
26 actions of MARONEY who was the Vice President of MONEX, that as
27 Vice President MARONEY was involved in management at MONEX and had
28 been one of the individuals that ultimately supervised Sherri

1 Boland and other MONEX account representatives. On or about July
2 18, 2008, MARONEY represented to CRONIN, in substance, that Sherri
3 Boland would no longer be handling CRONIN's account but that CRONIN
4 should not be concerned because WALES was being assigned to his
5 account and that WALES was the best account representative that
6 MONEX had and that he had more expertise, knowledge and
7 sophistication in silver investments than CRONIN and that CRONIN
8 could, and should, trust WALES' statements to CRONIN. MARONEY
9 further represented to CRONIN that WALES knew CRONIN's account and
10 wanted to take care of it and that WALES got all of the big
11 accounts like CRONIN's. CRONIN did not know WALES and accepted, as
12 true, MARONEY's representation. MARONEY also suppressed the fact
13 that Boland had been terminated by MONEX - - a fact which would
14 have proved highly relevant to CRONIN given his trust and
15 confidence in Boland. ("MARONEY Misrepresentations and
16 Suppression"). Based on MARONEY's Misrepresentations and
17 Suppression CRONIN determined he would accept WALES as his new
18 account representative.

19
20 24. In order to assure that CRONIN would change his "short"
21 positions to the enrichment of Defendants, shortly after becoming
22 CRONIN's account representative, WALES represented to CRONIN that
23 if CRONIN followed his advice that he would never have an equity
24 call and based on MARONEY's representations of WALES' skills CRONIN
25 believed WALES. Shortly after becoming CRONIN's account
26 representative WALES represented to CRONIN that the silver market
27 was going to turn upward and that CRONIN should change his "short"
28 position and go with a conventional position of silver (sometimes

1 referenced at MONEX as "going long"). When CRONIN questioned WALES
2 about this WALES reemphasized many times that he knew the price of
3 silver was going to go up and that he would guaranty CRONIN he
4 would not lose any money if CRONIN changed his "short" positions
5 and that he would give him a letter signed by someone else in a
6 superior position in the company guarantying him he would not lose
7 money and that by the end of the year the account would be worth 3
8 or 4 million dollars. ("WALES Misrepresentations"). WALES pressured
9 CRONIN strongly and CRONIN accepted WALES' representations and
10 assurances and acted upon them, based on the misrepresentations
11 described above and his ignorance of the suppressed facts described
12 above.

13
14 25. By accepting WALES' Misrepresentations, in a few short
15 weeks CRONIN lost in excess of \$1.3 million of the funds he had
16 invested and Plaintiff is informed and believes that Defendants
17 enriched themselves by the same amount. In addition, had he
18 received sound representations CRONIN would have realized a profit
19 of \$4 - 5 million on his "short" transactions. Instead, Plaintiff
20 is informed and believes that Defendants had taken acts that would
21 permit them to procure that profit instead of CRONIN.

22
23 26. Plaintiff is informed and believes that Defendant GALA
24 was the sales director over WALES and that the sales team under
25 WALES was doing poorly at the time that CRONIN was told by WALES to
26 change his short positions and go long and that one motivation for
27 the representations of WALES was so that WALES and GALA could make
28 more money for MONEX and for themselves. Plaintiff is informed

1 and believes that GALA was fully aware of the representations made
2 by WALES and either instructed WALES to make them or fully approved
3 of them by reason of the motivation just described.
4

5 27. Plaintiff is informed and believes, and thereon alleges,
6 that Defendants followed the same or a similar pattern with all of
7 Sherri Boland's former clientele (representing about a \$21 million
8 book of business) and that those clientele lost most of their
9 investments after Boland's termination.
10

11 **FIRST CAUSE OF ACTION**
12 **FOR FRAUD UNDER COMMODITY**
13 **FUTURES MODERNIZATION ACT OF 2000**
14 **7 U.S.C. § 6b**
15 **(AGAINST ALL DEFENDANTS)**
16

17 28. Plaintiff incorporates herein by reference Paragraphs 1
18 through 27 of this Complaint as if fully set forth herein.
19

20 29. The Suppressed Facts and the MARONEY suppressed fact, were
21 material facts of import to CRONIN in his decisions and of which he
22 was ignorant. These facts were suppressed by Defendants, despite
23 their obligation to disclose them, with the intent to defraud
24 CRONIN and with the intent to induce him to act in ignorance
25 thereof. The Initial Misrepresentations, the MARONEY
26 Misrepresentations, and the WALES Misrepresentations were made with
27 the intent to defraud CRONIN and with the intent to induce him to
28 act thereon and were false and Defendants knew they were false. The

1 true facts were, among others, those reflected in the facts that
2 were suppressed and the fact that WALES was one of the worst
3 account representatives at MONEX who did not have CRONIN's interest
4 at heart, but was instead assigned to the account for the specific
5 purpose of causing CRONIN to lose his investments and to preclude
6 him from realizing his profits. Plaintiff is further informed and
7 believes that WALES did not believe that the price of silver would
8 increase at the time he so represented and warranted to CRONIN. In
9 addition, the Futures Contract and all Futures Transactions
10 emanating therefrom, are contracts for purchase and sale of a
11 commodity for future delivery within the meaning of 7 U.S.C. § 6(a)
12 requiring Defendants to comply with the registration requirements
13 of 7 U.S.C. § 6(a). Defendants entered the Futures Contract and
14 made the Futures Transactions thereunder in violation of 7 U.S.C.
15 § 6(a), all pursuant to their conspiracy. Accordingly, the Futures
16 Contract and all Futures Transactions thereunder are illegal off-
17 exchange contracts.

18
19 30. CRONIN acted in ignorance of the facts that were suppressed
20 and believed the representations and justifiably relied thereon.
21 Had CRONIN known the true facts CRONIN would not have entered into
22 the Futures Contract and would not have entered the Futures
23 Transactions and would, instead, have made investments in the
24 futures market with a legitimate company. Had CRONIN known the true
25 facts with regard to the MARONEY Misrepresentations and Suppression
26 and the WALES Misrepresentations he would not have changed his
27 "short" positions.

1 31. Plaintiff is informed and believes that Defendants,
2 pursuant to their conspiracy, desired that the Futures Contract and
3 the Futures Transactions appear to be legitimate to CRONIN so as to
4 gain his trust and confidence with the intent that he would invest
5 substantial sums in short contracts with the intent of realizing a
6 large return and then utilized the MARONEY Misrepresentations and
7 Suppression and the WALES Misrepresentations to cause CRONIN to
8 change his "short" positions. Plaintiff is informed and believes
9 that in addition to causing CRONIN to lose in excess of \$1.3
10 million of the dollars that he had invested, which Plaintiff is
11 informed and believes enriched Defendants, that Defendants were
12 also able to enrich themselves with the \$4 - \$5 million dollars in
13 profits that CRONIN would have realized had he not been persuaded
14 to change his "short" positions.

15
16 32. The foregoing fraud exercised by Defendants in connection
17 with the Futures Contract and the Futures Transactions were
18 violations of 7 U.S.C. § 6b. In addition to their culpability
19 pursuant to the conspiracy, Defendants are also all responsible for
20 said violations under 7 U.S.C. § 13c by reason of the fact that
21 each of the Defendants wilfully aided and abetted each of the other
22 Defendants in the commission of said violations.

23
24 33. As a proximate result of said violations Defendants have
25 caused Plaintiff to be damaged in an amount in excess of \$6.3
26 million and according to proof together with interest thereon at
27 the legal rate of 10% per annum.

1 **SECOND CAUSE OF ACTION**
2 **CALIFORNIA COMMON LAW FRAUD**
3 **(AGAINST ALL DEFENDANTS)**
4

5 34. Plaintiff incorporates herein by reference Paragraphs 1
6 through 31, inclusive, as if fully set forth herein.
7

8 35. As a proximate result of said fraud Defendants have caused
9 Plaintiff to be damaged in an amount in excess of \$6.3 million and
10 according to proof together with interest thereon at the legal rate
11 of 10% per annum.
12

13 36. In doing the acts alleged herein, and by reason of the
14 facts and circumstances alleged herein, Defendants, and each of
15 them, acted with oppression, fraud, and malice towards Plaintiff,
16 entitling Plaintiff to an award of punitive damages in an amount in
17 excess of \$24 million and according to proof.
18

19 **THIRD CAUSE OF ACTION**
20 **BREACH OF CONTRACT**
21 **(AGAINST ALL DEFENDANTS)**
22

23 37. Plaintiff incorporates herein by reference Paragraphs 1 -
24 31, inclusive, of this Complaint as if fully set forth herein.
25

26 38. As alleged above, Plaintiff and Defendant MONEX entered
27 into the Futures Contract and pursuant to that contract entered
28 into various Futures Transactions which were controlled by the same

1 terms set forth in the Futures Contract.

2
3 39. Plaintiff has performed all obligations required of it
4 under said contract and said transactions.

5
6 40. MONEX breached the agreement with Plaintiff pursuant to
7 the conspiracy alleged above by, among other things, suppressing
8 the Suppressed Facts and the MARONEY suppressed fact, making the
9 Initial Misrepresentations, the MARONEY Misrepresentations, and the
10 WALES Misrepresentations, providing through WALES a purported
11 account strategy that was intended to fail, providing an account
12 representative that did not have the experience, knowledge and
13 sophistication promised, failing to disclose to CRONIN that MONEX
14 did not want CRONIN to retain or profit from his short positions
15 and acting consistent with that suppressed intent, and by taking
16 acts, and making statements and representations, that were
17 calculated to deprive CRONIN of the benefit of his bargain.

18
19 41. As a proximate result of said breaches Plaintiff has been
20 damaged in an amount in excess of \$6.3 million and according to
21 proof together with interest thereon at the legal rate of 10% per
22 annum and according to proof.

23
24 **FOURTH CAUSE OF ACTION**
25 **NEGLIGENT MISREPRESENTATION**
26 **(AGAINST ALL DEFENDANTS)**
27

28 42. Plaintiff incorporates herein by reference paragraphs 1

1 through 27 of this Complaint as if fully set forth herein.

2
3 43. Plaintiff alleges, in the alterative, that the MARONEY
4 Misrepresentations, and the WALES Misrepresentations were made with
5 the intent to induce CRONIN to act thereon and were false and
6 Defendants made such representations with no reasonable ground for
7 believing them to be true. The true facts were those reflected in
8 the facts that were suppressed and the fact that WALES was one of
9 the worst account representatives at MONEX who did not have
10 CRONIN's interest at heart, but was instead assigned to the account
11 for the specific purpose of causing CRONIN to lose his investments
12 and to preclude him from realizing his profits. Plaintiff is
13 further informed and believes that WALES had no reasonable ground
14 to believe that the price of silver would increase at the time he
15 so represented and warranted to CRONIN.

16
17 44. CRONIN believed the representations and justifiably relied
18 thereon. Had CRONIN known the true facts CRONIN would not have
19 changed his "short" positions.

20
21 45. As a consequence of said misrepresentations and his
22 reliance thereon Plaintiff lost in excess of \$1.3 million of the
23 dollars that he had invested and is further informed and believes
24 that he lost \$4 - \$5 million dollars in profits that he would have
25 realized had he not been defrauded.

26
27 46. Accordingly, Defendants have caused Plaintiff to be
28 damaged in an amount in excess of \$6.3 million and according to

1 proof together with interest thereon at the legal rate of 10% per
2 annum.

3
4 47. In doing the acts alleged herein Defendants, and each of
5 them, acted with a wilful or conscious disregard of the rights of
6 Plaintiff, entitling Plaintiff to punitive damages in an amount in
7 excess of \$24,000,000 and according to proof.

8
9 **FIFTH CAUSE OF ACTION**
10 **CONSTRUCTIVE FRAUD**
11 **(AGAINST ALL DEFENDANTS)**
12

13 48. Plaintiff incorporates by reference paragraphs 1 - 31,
14 inclusive, of this Complaint as if fully set forth herein.

15
16 49. By reason of the facts alleged hereinabove, including the
17 entry of the Futures Contract and the representations of Defendants
18 to Plaintiff, either a fiduciary relationship or a confidential
19 relationship in which Plaintiff placed trust and confidence in the
20 integrity and fidelity of Defendants was formed between Plaintiff
21 and Defendants.

22
23 50. By reason of said relationship Defendants, and each of
24 them, had a duty not to gain any advantage over Plaintiff by
25 misleading him to his prejudice. Thus, Defendants had an obligation
26 of full and honest disclosure of all material facts known to
27 Defendants with regard to the Futures Contract and the Futures
28 Transactions.

1 51. Defendants breached that duty to Plaintiff's prejudice
2 through the acts, statements, and suppressions of fact alleged
3 herein above.
4

5 52. As a proximate result of said constructive fraud,
6 Defendants have caused Plaintiff to be damaged in an amount in
7 excess of \$6.3 million and according to proof together with
8 interest thereon at the legal rate of 10% per annum.
9

10 53. In doing the acts alleged herein, and by reason of the
11 facts and circumstances alleged herein, Defendants, and each of
12 them, acted with oppression, fraud, and malice towards Plaintiff
13 and/or acted with wilful disregard for the rights of Plaintiff,
14 entitling Plaintiff to an award of punitive damages in an amount in
15 excess of \$24 million and according to proof.
16

17 **SIXTH CAUSE OF ACTION**
18 **COMMON COUNT FOR**
19 **MONEY HAD AND RECEIVED**
20 **(AGAINST ALL DEFENDANTS)**
21

22 54. Plaintiff incorporates herein paragraphs 1 through 31 and
23 53 of this Complaint as if fully set forth herein.
24

25 55. Within the last two years, in Orange County, California,
26 Defendants, and each of them, became indebted to Plaintiff in a
27 sum, the exact amount of which is currently unknown, but which is
28 believed to be in excess of \$6.3 million, and according to proof,

1 for money had and received by Defendants for the use and benefit of
2 Plaintiff.

3
4 56. Neither the whole, nor any part, due to Plaintiff by
5 Defendants, as alleged herein, has been paid, and there is now due,
6 owing, and unpaid from Defendants, and each of them, to Plaintiff
7 a sum in excess of \$6.3 million and according to proof together
8 with interest thereon at the legal rate of 10% per annum and
9 according to proof.

10
11 WHEREFORE, Plaintiff prays judgment against all Defendants,
12 and each of them, as follows:

13
14 **ON THE FIRST AND THIRD**
15 **CAUSES OF ACTION**
16

17 1. For damages in an amount in excess of \$6.3 million
18 and according to proof, together with interest thereon at the legal
19 rate of 10% per annum and according to proof.

20
21 **ON THE SECOND, FOURTH,**
22 **FIFTH AND SIXTH**
23 **CAUSES OF ACTION**
24

25 1. For damages in an amount in excess of \$6.3 million
26 and according to proof, together with interest thereon according to
27 proof.
28

1 2. For punitive damages in excess of \$24,000,000 and
2 according to proof.

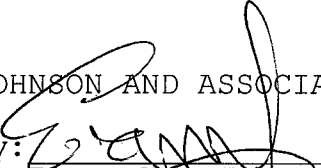
3
4 **ON ALL CAUSES OF ACTION**

5
6 1. For costs of suit, including reasonable attorney fees to
7 any extent allowed by law.

8
9 2. For such other and further relief as the court deems just
10 and proper.

11
12 Dated: December 4, 2008

JOHNSON AND ASSOCIATES

13 By: 
14 Einar Wm. Johnson
15 Attorneys For Plaintiff
16 DARTY CRONIN
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